

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MILTON S. LYNCH,

Plaintiff,

Civil No. 09-871-JE

v.

ORDER

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

HAGGERTY, District Judge:

Magistrate Judge Jelderks issued a Findings and Recommendation [23] in this action recommending that a Judgment should be entered reversing the Commissioner's decision, and remanding this action to the agency for an award of benefits.

The Commissioner filed timely objections [25], and the matter was then referred to this court. When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28

U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The court has undertaken a *de novo* review, carefully evaluating the Magistrate's Findings and Recommendation, the objections, and the entire Record. For the following reasons, the objections are overruled and Judgment is entered reversing the Commissioner's decision and remanding this action to the agency for an award of benefits.

ANALYSIS

Magistrate Judge Jelderks provided a thorough analysis of the facts presented, which need only be summarized here. The Findings and Recommendation concluded that the administrative finding that plaintiff could perform past relevant work was unsupported by substantial evidence, and, in "the absence of evidence that plaintiff could perform his past work as an asset manager, there is no evidence that plaintiff could perform any of his past relevant work." Findings and Recommendation at 12. In recommending that the matter be remanded for an award of benefits, the Magistrate Judge accepted plaintiff's representation that plaintiff is unable to perform past relevant work, and that he lacks any transferable skills. *Id.*

The Magistrate Judge also determined that the Administrative Law Judge also erred by providing "legally insufficient" reasons for rejecting medical opinions that found that plaintiff was limited to sedentary work, by rejecting plaintiff's testimony without clear and convincing reasons for doing so, and by discrediting lay testimony without providing germane reasons for doing so. Findings and Recommendation 14-18.

The Commissioner's objections challenge only the conclusion that plaintiff's job skills were not transferable. Accordingly, this court need only satisfy itself that there are no clear errors

on the face of the record in order to accept those conclusions. *Campbell v. United States District Court*, 501 F.2d 196 (9th Cir. 1974). No clear error appears on the face of the record regarding these well-reasoned conclusions, and this court adopts the Findings and Recommendation's alternative conclusions as additional bases for remanding this case for an award of benefits.

Further, the objections as to the alleged transferability of plaintiff's job skills are overruled. This court concludes that a complete review of the record fails to reveal any outstanding issue that remains to be resolved. The evidence presented, including the testimony provided by a vocational expert, establishes that plaintiff's past duties were not "skilled" and required no technical knowledge. Moreover, permitting the Commissioner a further opportunity under these circumstances to amend additional findings to comport with yet another denial of disability benefits is not in the interests of justice. *See Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989) (if remand for further proceedings would only delay the receipt of benefits, judgment for the claimant is appropriate).

CONCLUSION

This court has undertaken a *de novo* review of the Findings and Recommendation at issue. The Objections [25] are OVERRULED. The Findings and Recommendation [23] is sound and is adopted in its entirety. By separate issuance, Judgment is entered reversing the Commissioner's decision, and remanding this action to the agency for an award of benefits.

IT IS SO ORDERED.

DATED this 4 day of January, 2011.

/s/ Aancer L. Haggerty
Aancer L. Haggerty
United States District Judge

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